

# EXTENSIONS OF REMARKS

## ENERGY INDEPENDENCE AND SECURITY ACT OF 2007

SPEECH OF

**HON. JOHN D. DINGELL**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, December 18, 2007*

Mr. DINGELL. Madam Speaker, as we are well aware, the bill before us, H.R. 6, is not the product of a formal conference, but rather the result of amendments being passed between the House and Senate as a means of resolving the differences between their respective bills. I have noted in the past, and will continue to note, that I find this manner of legislating to be unsatisfactory and unwise. Given the difficulty experienced by the Senate in going to conference on any bill this year, however, this process is the best that we can hope for under the circumstances.

One of the reasons this process is inferior to that of a formal conference is the lack of a conference report and, thus, the lack of a written legislative history detailing why certain policies were adopted and others excluded. When the House passed its version of the energy bill currently before us (H.R. 3221) on August 4, 2007, the Committee on Energy and Commerce had contributed more to this legislation than any other committee in the House of Representatives and is the Committee of primary jurisdiction over the entire legislation.

The Committee's contribution was the result of six bills that were ultimately engrossed in H.R. 3221: H.R. 3236, the Energy Efficiency Improvement Act of 2007; H.R. 3237, the Smart Grid Facilitation Act of 2007; H.R. 3238, the Renewable Fuels Infrastructure Act; H.R. 3239, to promote advanced plug-in hybrid vehicles and vehicle components; H.R. 3240, the Energy Information Availability Act; and H.R. 3241, an act dealing with energy loan guarantee amounts. With the exception of H.R. 3241 (which was dropped in its entirety), the majority of the Committee's work was preserved in the bill before us today and the committee reports filed on August 3, 2007, remain relevant.

Therefore my remarks today will deal primarily with policies adopted in the bill before us on which the House initially had no position, such as the changes in Corporate Average Fuel Economy (CAFE) found in Title I, and the Renewable Fuel Standard (RFS) found in Title II. Both policies are within the jurisdiction of the Committee on Energy and Commerce and represent a substantial change in current law.

Title I of H.R. 6, as amended by the Senate and now under consideration by the House, increases energy security and reduces emissions of greenhouse gases by improving vehicle fuel economy standards. This legislation represents a comprehensive overhaul and expansion of the Corporate Average Fuel Economy (CAFE) program, administered by the U.S. Department of Transportation, DOT. The specific objectives and targets reflect

Congress's determination of the maximum feasible increases in fuel economy that would permit the development and application of technology, giving appropriate consideration to the cost of compliance.

The CAFE program, administered by DOT, had been the sole means for regulating the fuel economy and carbon dioxide emissions of new motor vehicles made for sale in the United States since the 1970s. Congress specifically prescribed how DOT should determine the maximum feasible levels for fuel economy standards under the Energy Policy and Conservation Act, carefully balancing technological feasibility, economic practicability, the effect of other regulations on fuel economy, and the need of the United States to conserve oil.

Approximately 30 years after Congress enacted the Clean Air Act to regulate air pollutants, however, the United States Supreme Court recognized the obligation of the Environmental Protection Agency, EPA, to regulate greenhouse gas emissions from new motor vehicles under that Act. Carbon dioxide is widely recognized as one of the greenhouse gases that are emitted from motor vehicles, and one way to regulate the emissions of carbon dioxide from motor vehicles is to improve the fuel economy of those vehicles. As such, there is potential for EPA's authority under the Clean Air Act to overlap and conflict with that of the Department of Transportation.

H.R. 6, as initially passed by the Senate, included a section 519 expressly addressing the ability of EPA to regulate carbon dioxide emissions from new motor vehicles and its authority to grant preemption waivers to California to regulate the same. Section 519 stated that "[n]othing in this title shall be construed to conflict with the authority provided by sections 202 and 209 of the Clean Air Act (42 U.S.C. 7521 and 7543, respectively)." The House of Representatives later amended the Senate amendments to H.R. 6 without including the Senate language in Section 519. Although the Senate further amended the House amendments to the Senate amendments of H.R. 6, the language of section 519 was not reinserted.

Subsequent to the Court's decision, but prior to consideration of this legislation, the President of the United States issued Executive Order 13432 requiring EPA and the Department of Transportation to coordinate their efforts when addressing emissions of carbon dioxide from new motor vehicles. The Supreme Court interpreted section 202(a) of the Clean Air Act as providing EPA authority to regulate greenhouse gas emissions from motor vehicles. That grant of authority provides the EPA Administrator sufficient discretion to promulgate EPA regulations that conform to corresponding regulations issued by the Secretary of Transportation under this legislation. The Secretary, however, does not have corresponding flexibility to conform her regulations to those issued by the Administrator. The Secretary of Transportation is constrained by statutory guidelines contained in this legislation and the statutes it amends.

For example, to ensure the economic practicability of the fuel economy standards it establishes, section 102 of this legislation prohibits DOT from issuing standards for more than 5 model years at a time. The Department should issue standards only for those model years for which it can obtain reasonably-developed confidential product plans from vehicle manufacturers, and it is the determination of Congress that the amount of time should not exceed 5 years. This timeframe allows for reasonable and realistic estimates of market conditions, the availability of new and developing technologies, and other considerations of technological and economical practicability. Likewise, any other regulations issued or enforced regulating emissions of carbon dioxide that affect motor vehicle fuel economy should correspond to the timeframe and relevant limits placed on the Department of Transportation by Congress under this legislation.

This legislation provides clear and comprehensive direction to the Executive Branch regarding any and all regulations and enforcement actions with respect to increased motor vehicle fuel economy standards. Pursuant to this legislation, Congress intends for any regulations issued or enforced by the Environmental Protection Agency regulating emissions of carbon dioxide from motor vehicles under the Clean Air Act that affect vehicle fuel economy, be consistent with the provisions of this legislation, the CAFE program, and any regulations issued or enforced by Department of Transportation.

Title II of H.R. 6, as amended by the Senate and now under consideration by the House, pertains to the Renewable Fuels Standard or RFS. It was first created by the Energy Policy Act of 2005 (P.L. 109-58) for both environmental and energy security reasons. Since its inception, the RFS has been administered by EPA under the authority of the Clean Air Act. The RFS has experienced initial success in helping wean the Nation from its dependence on foreign petroleum. In 2007, our passenger vehicles used approximately 6 billion gallons of ethanol, thereby burning 4 billion fewer gallons of gasoline. This is well ahead of the schedule adopted in 2005. Several factors have converged that cause us to scale the program up to the levels in the bill before us today. First, with the price of a barrel of oil hovering in the \$100 range for several weeks now, the need to continue to decrease our dependence on foreign petroleum is more apparent than ever and to do so will require increased amounts of renewable fuel. Second, the need to reduce greenhouse gas emissions from the transportation sector is also more apparent, and renewable fuels hold great promise in helping meet this challenge. Conversely, several concerns have been raised with the viability of relying on corn-based ethanol as our primary renewable fuel: making ethanol from corn competes with other uses of corn as a food commodity and food-making feedstock; requires heavier use of pesticides and fertilizers; and also requires an increasing amount of farm acreage devoted to its cultivation.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

To address these competing concerns, the bill before us places an emphasis on the use of cellulosic biomass as a means of producing ethanol. Cellulosic ethanol holds great promise for the future of renewable fuels because it uses what now constitutes agricultural residue waste or low-value plant matter, and it contributes fewer greenhouse gas emissions to our atmosphere than either corn-based ethanol or conventional gasoline. The challenge with cellulosic ethanol is that it is not yet available on a commercial basis. This is a young industry that requires two things before its product can be widely deployed: (1) technological breakthroughs that will allow it to be produced on a cost effective commercial scale; and (2) the support of the Federal Government. To that end, the bill mandates the use of 16 billion gallons of cellulosic ethanol by 2022.

A dramatic expansion of alternative fuels was initially proposed by President Bush in his State of the Union address this year, and an expansion of renewable fuels was later championed by the Senate in the energy bill it passed on June 21, 2007. Both proposals, however, contained serious flaws that would have made implementation of this policy extremely difficult or failed to capture the promises of new technology.

First, both proposals would have kept the current RFS in place at EPA under the Clean Air Act and created a new, additive program under which authority is directly assigned to the President, presumably permitting delegation to an unspecified entity of the Executive Branch. This would have caused a tremendous amount of regulatory uncertainty for the obligated parties who must meet the mandates of the RFS and would have caused bureaucratic duplication of a character that often bedevils the Federal Government. The compromise bill before us properly amends the current program, and in doing so makes significant changes to the existing renewable fuel standard, many of which require EPA to modify its existing regulations. Section 210(a) and (c) of the bill govern the transition from the existing RFS program to the modified RFS program. Section 210(a) provides that the increase in the renewable fuels mandate level for 2008 goes into effect without additional rulemaking by EPA. The other statutory changes to the RFS do not go into effect until January 1, 2009, by which time EPA is required to have completed a rulemaking to amend its RFS regulations.

Second, while cellulosic ethanol holds great promise, it is not commercially available today. If we are going to formulate policy to encourage its successful deployment, we must also be prepared to fall short and in so doing, plan for a worst-case scenario. The earlier Senate-passed bill failed to do so. The compromise bill before us couples an aggressive, technology-forcing schedule for cellulosic biofuels with a "safety net" for refiners in new Clean Air Act Section 211(o)(7)(D).

On an annual basis, EPA must compare the projected domestic production for cellulosic biofuels for the following calendar year to the level set in the statute. For any calendar year in which projected domestic production is less than the mandate level set in the statute, EPA is required to revise the mandate level so that it equals projected domestic production. EPA will thus be waiving the requirement to meet the amount of the mandate set in the statute that is higher than projected domestic produc-

tion. Obligated parties, such as refiners, will then have to turn in credits at the end of the year in an amount equal to the revised mandate; they will not have to turn in credits equal to the mandated level set in the statute. If EPA issues such a waiver, the bill authorizes and requires EPA to make credits available for sale pursuant to new Clean Air Act Section 211(o)(7)(D). Absent such a credit provision, artificially high prices might be charged for biofuels, which could occur in a tight market. The credit provision effectively caps the price for cellulosic biofuels if cellulosic technology is not deployed as rapidly as required by the bill.

Third, neither the President's proposal nor the Senate bill ensured that cellulosic technology would significantly assist in meeting the challenge of reducing greenhouse gas emissions from the transportation sector. One of the important potential benefits of cellulosic biofuels is that their lifecycle greenhouse gas emissions are predicted to be 80 to 110 percent lower than those of gasoline, although there is some uncertainty about the reduction level because cellulosic technology and the lifecycle greenhouse gas analytical methodology are still under development. This bill requires that cellulosic biofuels achieve at least a 60 percent reduction. Cellulosic biofuels that do not achieve at least a 60 percent reduction in lifecycle greenhouse gas emissions can get credit as advanced biofuels if they achieve at least a 50 percent reduction.

Section 210(b) of the bill before us also adds subparagraph 211(o)(12) to the Clean Air Act to clarify that nothing in subsection 211(o) or rules issued thereunder shall affect or be construed to affect the regulatory status of carbon dioxide or any other greenhouse gas, or to expand or limit regulatory authority regarding carbon dioxide or any other greenhouse gas, for purposes of other provisions of the Clean Air Act. The reference in Section 204(b) of the bill to Clean Air Act Section 211(o)(12) does not change this intent in any way, but merely ensures that Section 204(b) is not read as overriding new Clean Air Act Section 211(o)(12).

Fourth, the bill before us provides more specificity than the President's proposal or the Senate bill about what qualifies as renewable biomass. New Clean Air Act Section 211(o)(1)(I) adds some important environmental safeguards to the RFS program, including ones that will help protect certain wildlife habitats and special eco-systems.

The bill before us also contains other new provisions designed to make the program more workable. Under certain circumstances where an insufficient volume of biofuels are produced to meet the mandated levels set in the statute, new Section 211(o)(7)(F) of the Clean Air Act directs the administrator to reset the mandate levels for future years. In doing so, the administrator is to use the same criteria, standards and processes as he is required to use by new Clean Air Act Section 211(o)(2)(B)(ii) when setting mandated levels post-2022. The reference to new Clean Air Act Section 211(o)(2)(B)(ii) incorporates new Clean Air Act Section 211(o)(2)(B)(iii) and (iv). It is the intent of Congress that these criteria will ensure that, if the administrator sets the applicable volume of advanced biofuel under new Clean Air Act Section 211(o)(17)(7) for any particular year, it shall be at least the same percentage of the applicable volume of renewable fuel in the previous calendar year.

When the administrator must establish mandated levels of cellulosic biofuels, new Clean Air Act Section 211(o)(2)(B)(iv) directs the administrator to set the mandate at a level that the administrator expects can be met without the use of the safety net provisions in new Clean Air Act Section 211(o)(7)(D). Nonetheless, the safety net provisions would continue to be available if needed.

Although the mandatory requirements of the RFS program are limited to transportation fuels, it is possible that renewable fuel could also replace petroleum-based fuel used for home heating or jets. Rather than expand the mandated coverage of the RFS program to include home heating oil or jet fuel, which might result in additional obligated parties or make implementation of the program more burdensome, new Clean Air Act Section 211(o)(5)(E) gives the administrator discretion to allow RFS credits to be earned for renewable fuel sold for home heating or as jet fuel.

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### MAKE THE R&D TAX CREDIT PERMANENT

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**HON. BILL SALI**

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 28, 2007*

Mr. SALI. Mr. Speaker, in just a few days the Research and Development Tax Credit expires. Sadly, this will not be the first time Congress allowed this to happen. The world of business has its own challenges without adding the stressful uncertainty on whether the R&D tax credit will be available next year. A permanent extension of the R&D tax credit can go miles in advancing our competitive edge in the global economy.

Manufacturers, small companies, and any firm that does research relies on the R&D tax credit. Businesses must constantly meet changing consumer demands and do so by offering products and services, which makes R&D essential. Companies benefit from a R&D tax credit by improving their products and services. Congress has needlessly placed hardship and unnecessary risk on industries by not making this tax credit a reliable and predictable part of their business calculus.

We missed an opportunity to change that. When the House reconvenes, let us make the R&D tax credit permanent.

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### PERSONAL EXPLANATION

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**HON. EDWARD J. MARKEY**

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

*Friday, December 28, 2007*

Mr. MARKEY. Madam Speaker, on December 19, 2007, I was unavoidably detained and missed rollcall vote 1186 on H.R. 2764. Had I been present, I would have voted "nay."